IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ELLEN JOHNSTON **PLAINTIFF**

V. **CIVIL ACTION NO.: 2:07CV42 P-B**

ONE AMERICA PRODUCTIONS, INC., EVERYMAN PICTURES, TWENTIETH CENTURY-FOX FILM CORPORATION and JOHN DOES 1 AND 2 **DEFENDANTS**

MOTION TO STRIKE EXHIBITS A - E TO PLAINTIFF'S
RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Defendants One America Productions, Inc. and Twentieth Century Fox Film Corporation ("Defendants") move to strike Exhibits A through E submitted by Plaintiff in opposition to the Motion of Defendants to Dismiss for Failure to State a Claim [Docket Entry 7] ("Motion to Dismiss"). In support, Defendants present the following:

1. In her Response to Defendants' Motion to Dismiss for Failure to State Claim and Memorandum in Opposition to Motion to Dismiss and Motion to Amend Complaint to Add Additional Ground [Docket Entry 10] ("Response in Opposition"), Plaintiff asserts that Defendants' exhibits to their Motion to Dismiss convert it to one for summary judgment, making proper her submission of matters outside of the pleadings.

2. Specifically, Plaintiff relies upon the following exhibits in her Response in Opposition – each of which constitutes material outside the pleadings and is inappropriate for an opposition to a Rule 12(b)(6) motion to dismiss:

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a. Plaintiff's Exhibit A: Pages 61-62 and 69-70 of *Clearance and Copyright: Everything the Independent Filmmaker Needs to Know*;

b. Plaintiff's Exhibit B: Affidavit of Ellen Johnston;

c. Plaintiff's Exhibit C: Affidavit of Craig Johnston;

d. Plaintiff's Exhibit D: Excerpt - transcribed excerpt of interview with Sacha Baron Cohen by National Public Radio; and

e. Plaintiff's Exhibit E: Affidavit of Carol Edwards.

3. Contrary to Plaintiff's assertions, nothing in Defendant's Motion to Dismiss warrants conversion to a motion for summary judgment.

4. Exhibit Nos. 2-4 submitted in conjunction with Defendants' Motion to Dismiss are documents and things integral to Plaintiff's Complaint (but not attached thereto) and/or are matters of which the Court can take judicial notice – neither of which necessitate conversion of Defendants' Motion to Dismiss to a motion for summary judgment.

5. Moreover, *Plaintiff's submission* of matters outside the pleadings in opposition Defendants' Motion to Dismiss does not convert Defendants' motion into one for summary judgment.

6. Plaintiff is not entitled to submit and/or rely upon materials outside the pleadings in her Response in Opposition.

7. Plaintiff's Exhibits A through E to her Response in Opposition and any reference to those exhibits therein should be stricken.

8. Plaintiff's Exhibit D to her Response in Opposition should be stricken for the further reasons that it constitutes inadmissible hearsay and is incomplete, unreliable and misleading.

9. Likewise, Plaintiff's Exhibit A to her Response in Opposition should be stricken

for the further reasons that it is incomplete, unreliable and misleading.

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth above and as further explained in their accompanying Memorandum In Support of Defendants' Motion to Strike, Defendants One America Productions, Inc. and Twentieth Century Fox Film Corporation respectfully request that the Court strike Exhibits A through E to Plaintiff's Response in Opposition to Defendants' Motion to Dismiss and any reference to those exhibits therein, and grant any other general or special relief as may be appropriate.

THIS, the 24th day of July, 2007.

Respectfully submitted,

ONE AMERICA PRODUCTIONS, INC., AND TWENTIETH CENTURY FOX FILM CORPORATION

s/ John C. Henegan
John C. Henegan, MB No. 2286
Donna Brown Jacobs, MB No. 8371

Attorneys for Defendants

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CERTIFICATE OF SERVICE

I, John C. Henegan, one of the attorneys for Defendants, hereby certify that I have this day filed the above and foregoing MOTION TO STRIKE EXHIBITS A-E TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS with the Clerk of the Court via the Court's ECF System which served a true copy upon the following via the Court's ECF system:

William O. Luckett, Jr.
wol@lucketttyner.com

ATTORNEY FOR PLAINTIFF

SO CERTIFIED, this the 24th day of July, 2007.

s/ John C. Henegan
JOHN C. HENEGAN

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